



ASSESSMENTS IN GST

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ASSESSMENT IN GST

Assessments

For Taxpayer

- Self Assessment u/s 59

For Authorities

- Provisional Assessment u/s 60
- Scrutiny of Returns u/s 61
- Best Judgment Assessments
 - ✓ For Non-Filers u/s 62
 - ✓ For Unregistered Persons u/s 63
- Summary Assessment u/s 64


DEFINITION OF ASSESSMENT – CLAUSE 2(11)

“Assessment”

- *assessment.*
- *Means determination of **tax liability** under this Act, and*
- *includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment*
- **Scope of assessment in GST is very limited and different as compare to other fiscal laws like Income tax and applicable to specified suppliers and even such supplier need not to be assessed every year.**



INTRODUCTION & PURPOSE OF ASSESSMENT

- Adjudication process is lengthy, and recovery is low as only a % of tax is required to be paid before filing Appeal
 - Gives a lot of time to the Assessee to manage its affairs
 - Assessment has been brought under GST from VAT law to fasten recovery proceedings
 - No. of assessee are much more whereas no. of department officials is limited.
 - Principal of Natural Justice has been followed in Assessment provisions.
 - Demand and Recovery provisions u/s 73 & 74 have also been taken care of
 - All the orders passed under assessment provisions are appealable before Appellate authorities and higher forums.
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SCRUTINY OF RETURNS – SECTION 61



RELEVANT PROVISION -SECTION 61 OF CGST
ACT, 2017 READ WITH RULE 99 OF CGST RULES,
2017

- **ASMT-10:** Notice u/s 61 for intimating discrepancies in the return after scrutiny
- **ASMT-11:** Reply to the notice issued u/s 61 intimating discrepancies in the return
- **ASMT-12:** Order of acceptance of reply against the notice issued u/s 61



SECTION 61 - SCRUTINY OF RETURNS

(1) The proper officer may scrutinize the return and related particulars furnished by the registered person

to verify the correctness of the return and

inform him of the discrepancies noticed, if any, in such manner as may be prescribed and seek his explanation thereto.



RULE 99(1) - SCRUTINY OF RETURNS

- Where **any return** furnished by a **registered person** is **selected for scrutiny**, the proper officer shall scrutinize the same in accordance with S.61 with **reference to the information available with him**, and in case of any discrepancy, he shall issue a notice to the said person in **FORM GST ASMT-10**, informing him of such discrepancy and seeking his explanation thereto within such time, **not exceeding thirty days** from the date of service of the notice or such further period as may be permitted by him and also, where possible, quantifying the amount of tax, interest and any other amount payable in relation to such discrepancy.



OBSERVATIONS ABOUT SEC. 61 - RULE 99

- Provisions applicable only to a **registered person (RP)** and not URP.
- Notice can be issued u/s 61 **only if return has been filed** by the RP.
- Manner of scrutiny not provided under the Act – whether Electronic or Manual?
- **Once a return has been selected for scrutiny, only then** proper officer would be able to scrutinize return related particulars for correctness of return




OBSERVATIONS ABOUT SEC. 61 - RULE 99

- Selection of return for scrutiny would be for verification of **correctness of the return.**
- Scrutiny of return to be carried out on the basis of **information available** with the proper officer.
- The **discrepancy must be pre-identified by PO before issuing ASMT-10.** PO cannot ask for further information from taxpayer to ascertain discrepancy.



SECTION 61 DOES NOT ALLOW PO TO ASSESS AND CREATE DEMAND AGAINST RP


- Sec. 61 only allows scrutiny of return for further action to be taken.
 - **Scope of verification of correctness is limited to mistake apparent from returns.**
 - No scope of investigation beyond returns.
 - No demand can be created/confirmed u/s 61.
 - If any demand is to be proposed, a notice has to be issued u/s 73 or 74.
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MEANING OF RETURN-CLAUSE 2(97)

- Clause 2(97) defines '**Returns**' as any return prescribed or otherwise required to be furnished by or under this Act or the rules made thereunder.
- Broadly any return furnished under section 39 (**GSTR-3B/4**), 44 (**GSTR-9- Annual Return**) and 45 (**GSTR-10- Final Return**) of CGST Act, 2017 falls under the definition of return.
- Statements like **GSTR-1** filed u/s 37 do not fall in the definition of Return. But it can be used by PO as an information available for ascertaining the discrepancies in GSTR-3B which is a Return.
- Clause 2(117) - "**valid return**" means a return furnished under sub-section (1) of section 39 on which **self-assessed tax has been paid in full. (Self-assessment regime)**



MINUTES TO 6TH GST COUNCIL MEETING – SEC. 61 IN MODEL GST LAW WAS 59 – WHY MANUAL SCRUTINY BACKED BY INTELLIGENCE WAS CHOSEN?

- The Hon'ble Minister from West Bengal observed that as scrutiny of returns was normally to be done electronically; it was contradictory to provide for scrutiny of returns by officers. He stated that officers would need to do scrutiny only in certain cases.
 - Hon'ble Ministers from Assam and Tamil Nadu supported the existing provision and stated that officers needed to do scrutiny.
 - The Hon'ble Chief Minister of Puducherry also supported the provision and observed that while the officer would carry out scrutiny, he would also be backed by the electronic system.
 - The Secretary to the Council pointed out that the expression used in Section 59(1) was 'may', which implied that officer would not always carry out scrutiny.
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MINUTES TO 6TH GST COUNCIL MEETING – SEC. 61 IN MODEL GST LAW WAS 59 – WHY MANUAL SCRUTINY BACKED BY INTELLIGENCE WAS CHOSEN?

- CCT Karnataka further clarified that while the IT system would throw up the suspicious cases requiring scrutiny, the officer would take into account all factors and might issue notice for scrutiny in select cases, as per the requirement. He added that if notice was issued only based on computer analysis, the Courts might strike it down on the ground of lack of application of mind.
- The Hon'ble Minister from Tamil Nadu stated that Section 59 was correctly worded and that in the first year, 100% assessment would need to be done as analytics framework would need time to develop.
- The CCT, Telangana stated that scrutiny should not be discretionary, and it should only be taken up on the basis of the alerts generated by computer.
- The Hon'ble Chairperson stated that scrutiny could also arise on account of some intelligence.

MEANING OF CORRECTNESS U/S 61

- Supreme Court in **UOI & Ors. vs Naresh Chander** on 27/08/2014 has referred to the meaning of correctness as follows:
- *In its ordinary meaning and substance, 'correctness' is compounded of 'legality' and 'propriety' and that which is legal and proper is 'correct'.*
- Verification of correctness covers both legality and propriety and therefore for any return and related particulars furnished by the registered person, proceedings-initiated u/s 61 can extend to verify legality and propriety of the return and related particulars furnished in the return regarding **Output tax liability** (Tax Rate, GSTR3B Vs GSTR-1 etc.), **Input tax credit** (Section 16, GSTR 3B Vs GSTR-2A, Section 17(5) etc.).

MEANING OF INFORMATION AVAILABLE

- Division bench of **Kerala High Court** in **United Mercantile Co. Ltd. v. CIT Kerala** observed that a detail becomes available to the Income Tax Officer when it is in the papers filed before him.
- Information available also includes information relating to true and correct state of law
- Information available also includes information relating to facts of the case



SECTION 61 - SCRUTINY OF RETURNS

- *61(2) In case the **explanation** is found **acceptable**, the registered person shall be informed accordingly and **no further action** shall be taken in this regard.*
- RP shall be informed in ASMT-12 if explanation is found acceptable.



SECTION 61 - SCRUTINY OF RETURNS

- **(3)** *In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate **appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74.***
- **ASMT-12 will not be issued**



SECTION 61 - SCRUTINY OF RETURNS

Sec.	Subject Matter
65	Audit by tax authorities
66	Special audit
67	Power of inspection, search and seizure
73	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any willful-misstatement or suppression of facts.
74	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts.

WHETHER TIME ALLOWED U/S 61 OF 30 DAYS TO PROVIDE EXPLANATION CAN BE REDUCED BY PO IN TERMS OF RULE 99(1)

- Section 61(3): *“In case no satisfactory explanation is furnished **within a period of thirty days** of being informed by the proper officer or such further period as may be permitted by him”*
- Rule 99(1): *“...informing him of such discrepancy and seeking his explanation thereto **within such time, not exceeding thirty days** from the date of service of the notice or such further period as may be permitted by him”*
- Whereas Section 61(3) provides a fixed initial time limit of 30 days, Rule 99(1) provides for a time period not exceeding 30 days which may mean that rule authorizes the PO to provide time period of lesser than 30 days which might or might not be extended further. The Rule goes beyond the provision of CGST Act. RP is entitled to seek time period of 30 days u/s 61.

WHETHER THE OPTION PROVIDED U/S 61 TO TAKE CORRECTIVE MEASURE IN RETURN FOR THE MONTH IN WHICH DISCREPANCY IS ACCEPTED IS REALLY AVAILABLE TO THE TAXPAYER

- On one hand **Sec. 61(3)** requires the tax-payer to take corrective measure in his return for the month in which discrepancy is accepted but on the other hand **Sec. 39(9)** **restricts** rectification of omission or incorrect particulars **discovered as a result of scrutiny**, audit, inspection or enforcement activity **by the tax authorities**. Therefore, by virtue of Section 39(9), such corrective action as provided in Section 61(3) is **debarred**.
- Therefore, an argument can be taken that proceedings under Section 61(3) are void since there is no machinery to implement the provision of Sec. 61 in case taxpayer admits the mistake and in such scenario every proceeding-initiated u/s 61 would lead to proceedings u/s 65/66/67 or determination under Section 73/74.



ASSESSMENT OF NON-FILERS OF RETURNS – SECTION 62



SECTION 62 - ASSESSMENT OF NON-FILERS OF RETURNS – BEST JUDGEMENT ASSESMENT

- *(1) Notwithstanding anything to the contrary contained in section 73 or section 74,*
- *where a **registered person** fails to furnish the return under section 39 (**GSTR-3B/4**) or section 45 (**GSTR-10 Final Return**), even after the service of a **notice u/s 46**,*
- *the proper officer may proceed to assess the tax liability of the said person to the **best of his judgment taking into account all the relevant material which is available or which he has gathered***
- *and issue an assessment order within **a period of five years from the date specified under section 44** for furnishing of the annual return for the financial year to which the tax not paid relates.*

SECTION 46 NOTICE TO RETURN DEFAULTER

- *Where a registered person fails to furnish a return under section 39 (GSTR-3B or 4) or section 44 (GSTR-9) or section 45 (GSTR-10), a notice shall be issued requiring him to furnish such return **within fifteen days** in such form (GSTR-3A) and manner (electronically) as prescribed.*



SECTION 62 - ASSESSMENT OF NON-FILERS OF RETURNS – DEEMED WITHDRAWAL

- *(2) If RP furnishes a **valid return** - assessment order shall be deemed to have been withdrawn*
- *Where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of section 50 or for payment of late fee under section 47 shall continue.*
- **2(117)** “**valid return**” means a return furnished under sub-section (1) of section 39 on which **self-assessed tax has been paid in full**;



OBSERVATIONS IN SECTION 62

- Proceedings can be initiated only against a registered person.
- Section 62 is applicable where a registered person fails to furnish return u/s 39 (**GSTR-3B/4**) and 45 (**GSTR-10**) even after service of notice u/s 46 of CGST Act, 2017.
- Proceedings u/s 62 cannot be initiated for failure to file GSTR-1 (filed u/s 37) or GSTR-9 (filed u/s 44).
- Section 62 overrides the provisions of 73 and 74 to the extent they are contrary. Thus, demand can be confirmed u/s 62 without resorting to 73 and 74.
- Notice for non-filing of return u/s 46 has to be issued electronically in Form GSTR-3A. Without issuance of notice, no assessment u/s 62 can be completed by the PO.

NO SEPARATE NOTICE U/S 62 REQUIRED TO BE GIVEN

- If notice u/s 46 has been served electronically under Form GSTR-3A upon the registered person for non-filing of return u/s 39 or Section 45, and registered person does not file return in pursuance of the said notice, Section 62 does not mandate any further service of notice. In such cases, Section 62 read with Rule 100 empowers the proper officer to issue Assessment order, without any SCN, under FORM GST ASMT-13 and a summary thereof to be uploaded electronically in FORM GST DRC-07.



BEST JUDGEMENT – LIMITED TO MATERIAL AVAILABLE ON RECORD

- The section does not give an unfettered power to the assessing officer and the guess work involved in the order of best judgement **has to be made on the basis of material available on record and information gathered** by the assessing officer.



ESTABLISHED PRINCIPLES IN BEST JUDGEMENT

Supreme Court in the matter of State Of Kerala vs C. Velukutty on 2 December 1965

- limits of the power are implicit in the expression "best of his judgment". Judgment is a faculty to decide matters with wisdom truly and legally. Judgment does not depend upon the arbitrary caprice of a judge, but on settled and invariable principles of justice. Though there is an element of guess-work in a "best judgment assessment", it shall not be a wild one, but shall have a reasonable nexus to the available material and the circumstances of each case.
- Hon'ble Apex in the said matter set aside the order by Assessing Officer holding that in this case there was no material before the assessing authority relevant to the assessment and the impugned assessments were arbitrarily made by applying a ratio between disclosed and concealed turnover in one shop to another shop of the assessee. It was only a capricious surmise unsupported by any relevant material. The High Court, therefore, rightly set aside the orders of the Tribunal.

ESTABLISHED PRINCIPLES IN BEST JUDGEMENT


Supreme Court in Raghubar Mandal Harinder Mandal v. State of Bihar 1957 AIR 810, 1958 SCR 37

“No doubt it is true that when the returns and the books of account are rejected, the assessing officer must make an estimate, and to that extent he must make a guess: but the estimate must be related to some evidence or material and it must be something more than mere suspicion.”



PERIOD OF 30 DAYS PROVIDED U/S 62(2) TO FILE THE VALID RETURN CANNOT BE EXTENDED

Kerala High Court in Bridge Hygiene Services Private Limited V The State Tax Officer cited as 2019 (10) TMI 1181 - KERALA HC dated 23.10.2019

- “In my view, the statutory prescription of 30 days from the date of receipt of the assessment order passed under sub section (1) of Section 62 has to be strictly construed against an assessee and in favour of the revenue, since this is a provision in a taxing statute that enables an assessee to get an order passed against him on best judgment basis set aside. The provision must be interpreted in the same manner as an exemption provision in a taxing statute. This Court may not be justified in granting an extension of the period contemplated under sub section (2) of Section 62, so as to enable the assessee to file a return beyond the said period for the purposes of getting the benefit of withdrawal of an assessment order passed on best judgment basis under Section 62(1) of the GST Act.”
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ASSESSMENT OF UNREGISTERED PERSONS – SECTION 63



SECTION 63 - ASSESSMENT OF UNREGISTERED PERSONS

- *Notwithstanding* anything to the contrary contained in section 73 or section 74, **where a taxable person fails to obtain registration even though liable to do so or whose registration has been cancelled under subsection (2) of section 29 but who was liable to pay tax**, the proper officer may proceed to assess the tax liability of such taxable person **to the best of his judgment** for the relevant tax periods and issue an assessment order within a period of **five years** from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates :
- **Provided** that no such assessment order shall be passed **without giving the person an opportunity of being heard.**

OBSERVATIONS IN SECTION 63

- Applicable only to unregistered persons.
- Assessment is difficult to do as Department is not having any direct data. They have to resort to third party sources like information shared with Income Tax, ROC, etc.
- Information can be gathered by initiating search and seizure proceedings after taking necessary approvals
- Section 63 overrides the provisions of 73 and 74 to the extent they are contrary. Thus, demand can be confirmed u/s 63 without resorting to 73 and 74.
- Time limit of five years to serve the best judgement order from the due date of filing of GSTR-9 for the relevant period.



SECTION 29(2) – SUO-MOTO CANCELLATION

The proper officer **may cancel the registration** of a person from such date, **including any retrospective date**, as he may deem fit, where, —

- (a) a registered person has contravened such provisions of the Act or the rules made thereunder **as may be prescribed**; or
- (b) a person paying tax under **section 10** has not furnished returns for **three consecutive tax periods**; or
- (c) any registered person, **other than a person (composition dealer)** specified in clause (b), has not furnished returns **for a continuous period of six months**; or



SECTION 29(2) – SUO-MOTO CANCELLATION

- (d) any person who has taken **voluntary registration** under sub-section (3) of section 25 has not **commenced business within six months** from the date of registration; or
- (e) registration has been **obtained by means of fraud**, wilful misstatement or suppression of facts
- Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.



DISTINCTION BETWEEN 62 AND 63 W.R.T. BEST JUDGEMENT

- Section 62 provides for assessment of non-filers of return to the best of judgement taking into account all the relevant material which is available or which he has gathered. Therefore, proper officer has to take into account all the relevant material which is available on record or he has gathered.
- However, provision of section 63 **does not provide for taking into consideration any relevant material available on record or which he has gathered** but to the best of his judgement.
- But even then, provisions of section 63 cannot give an unfettered right to the proper officer to assess the person to an estimate which is a pure guess work.



SUMMARY ASSESSMENT IN CERTAIN SPECIAL CASES – SECTION 64



SECTION 64. SUMMARY ASSESSMENT IN CERTAIN SPECIAL CASES

- *(1) The proper officer may, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of Additional Commissioner or Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue:*
- *Provided that where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.*

SECTION 64. SUMMARY ASSESSMENT IN CERTAIN SPECIAL CASES

- (2) *On an **application** made by the **taxable person** within thirty days from the date of receipt of order passed under sub-section (1) or on his own motion, if the Additional Commissioner or Joint Commissioner considers **that such order is erroneous**, he may withdraw such order and follow the procedure laid down in section 73 or section 74.*



OBSERVATIONS IN SECTION 64

- Word 'Person' is neither qualified by 'Registered' nor 'Taxable'
- No mention of providing opportunity of hearing or issuance of Notice prior to issuance of Order
- Separate than Determination u/s 73 and 74
- Ensures speedy recovery of demand in cases where the person admits the same. No requirement to issue SCN u/s 73 or 74 in such cases.
- Sufficient grounds to be recorded prior to issuance of Order.

OBSERVATIONS IN SECTION 64


- No time limit for passing the Order.
- Is this section applicable to supplier of goods or services or both or only supplier of goods?
- This section does not contain a non-obstante clause with reference to section 73/74 as was the case in earlier section – implication thereof?
- If order is erroneous, PO has to follow the procedure u/s 73/74. Why not otherwise?



SELF ASSESSMENT – SECTION 59



SECTION 59 - SELF-ASSESSMENT

- *Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under section 39.*
 - 2 (94) “**registered person**” means a person who is registered under section 25 but does not include a person having a Unique Identity Number;
 - Clause 2(97) defines ‘**Returns**’ as any return prescribed or otherwise required to be furnished by or under this Act or the rules made thereunder.
 - Sec 2 (117) “**valid return**” means a return furnished under sub-section (1) of section 39 on which self-assessed tax has been paid in full;
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SECTION 59 - SELF-ASSESSMENT

Section 49(8):

- Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:—
 - (a) self-assessed tax, and other dues related to returns of previous tax periods;
 - (b) self-assessed tax, and other dues related to the return of the current tax period;
 - (c) any other amount payable under this Act or the rules made thereunder including the demand determined under section 73 or section 74;



SECTION 59 - SELF-ASSESSMENT CONSEQUENCES

- **73 (11)** Notwithstanding anything contained in sub-section (6) or sub-section (8), **penalty under sub-section (9) shall be payable** where any **amount of self-assessed tax** or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.
- **Circular 76/50/2018 dated 31/12/2018 (S.No. 2) gives relief.**
- *“The provisions of section 73 of the CGST Act are generally not invoked in case of delayed filing of the return in FORM GSTR-3B because tax along with applicable interest has already been paid but after the due date for payment of such tax. It is accordingly clarified that penalty under the provisions of section 73(11) of the CGST Act is not payable in such cases. It is further clarified that since the tax has been paid late in contravention of the provisions of the CGST Act, a **general penalty** under section 125 of the CGST Act may be imposed after following the due process of law.”*

RECOVERY FOR SELF ASSESSED TAX – 75(12)

- **SECTION 75: General provisions relating to determination of tax.**
- **75 (12): *Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.***
- **Section 80: Payment of tax and other amount in instalments.**
- *On an application filed by a taxable person, the Commissioner may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, **other than the amount due as per the liability self-assessed in any return**, by such person in monthly instalments not exceeding twenty four, subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed:*

KABEER REALITY PRIVATE LIMITED VERSUS THE UNION OF INDIA & OTHERS – MP HIGH COURT

2019 (12) TMI 48 - MADHYA PRADESH HIGH COURT dated 21.11.2019

- In the present case, there is no necessity to determine the taxable person, as the liability has been self assessed by the petitioner itself. So far as the determination of taxable person in the present case is concerned, the case of revenue rests on the GSTR declaration made by the petitioner itself, and therefore, there was no need of determination of taxable person. **Since the liability has already been quantified by the petitioner itself, only attempts are being made for recovering revenue dues under Section 79 (1)(c) of the Act of 2017.** The petitioner cannot escape his liability of payment of GST under Act of 2017, especially when he has filed GSTR-1 and has quantified the tax payable by him while submitting the GSTR-1.
- Notice rightly issued by Department by invoking Section 79(1)(c) *ibid* to the tenants of petitioner. [paras 28, 30, 31, 33, 34, 36]



M/S. LC INFRA PROJECTS PVT. LTD. VS UOI – KARNATAKA HIGH COURT

2019 (8) TMI 84 - KARNATAKA HIGH COURT dated 22.07.2019

- Interest recovery under GST - Show Cause Notice, requirement of – Attachment of Bank Account - Natural justice - **Statutory provision of recovery of interest without notice is applicable only in case of self-assessment and not in case of determination by authorities - Issuance of SCN is sine qua non to proceed with recovery of interest payable under Section 50 of Central Goods and Services Tax Act, 2017**
- Thus, determination of interest without Show Cause Notice and also attaching Bank account for its recovery again without issuing any notice, is violative of principles of natural justice - Impugned communications set aside being perverse and illegal - Sections 73 and 75 of Central Goods and Services Tax Act, 2017 - Article 226 of Constitution of India. [paras 5, 6, 7]

PROVISIONAL ASSESSMENT – SECTION 60



PROVISIONAL ASSESSMENT


31st GST E-Flyer released by CBIC

*“Provisional assessment provides a method for **determining the tax liability** in case the **correct tax liability cannot be determined** at the time of supply.*

*The payment of provisional tax is allowed **only against a bond and security**.*

*The provisional assessment has to be finalized **within six months** unless extended.*

*On finalization, the tax liability can either be more or less as compared to the provisionally paid tax. In case of increase in the tax liability, the **difference is payable** along with interest and in case of decrease in the tax liability the amount **will be refunded** with interest.”*



SECTION 60 R.W. RULE 98 - PROVISIONAL ASSESSMENT

- Where the **taxable person** is **unable to determine the**
 - a) **value** of goods or services or both;
 - b) **or determine the rate of tax** applicable thereto,
- Request proper office in ASMT-01 (**electronically**) for payment of tax on provisional basis
- Officer may ask to submit additional documents in ASMT-02
- Taxable person to reply in ASMT-03
- Order for paying tax on provisional basis indicating value or rate or both in ASMT-04 **within 90 days** from date of receipt of request
- Order shall indicate amount of bond as proper officer deems fit and security or surety to be furnished which shall not exceed **25%** of amount covered by bond.
- Taxable person shall execute bond in form ASMT-05 along with security in the form of bank guarantee.

SECTION 60 R.W. RULE 98 - PROVISIONAL ASSESSMENT


- **Final Assessment Order** to be passed **within 6 months** from the date of communication of ASMT-04.
- **Additional Information** for passing final order shall be asked in **ASMT-06**
- **Final Order in ASMT-07**
- Period of six month can be further extended by six months on sufficient cause being shown and reason in writing by JC and ADC and by Commissioner - **for further 4 years**
- **Interest will be payable** if tax determination is higher in Final Order from original due date to actual date of payment. (the provisional period will not have any relevance)
- Refund can be filed under Section 54 and interest will be paid to taxable person under Section 56.

PROVISIONAL ASSESSMENT VS. ADVANCE RULING

- Scope of Provisional Assessment restricted to determination of **Value** and **Rate** whereas scope of AAR is wide u/s 97.
- Final order u/s 60 is appealable before the higher forums (up till SC) whereas AAR order is only appealable before AAAR which also comprises of Revenue Officers. (HC/SC may not interfere)



SECTION 60 - PROVISIONAL ASSESSMENT - PRACTICAL ASPECTS

- Not much in use in real life as one has to go for final assessment.
 - It is better to pay tax on the basis of your understanding and issue debit/credit note subsequently.
 - Becomes imperative in certain situations.
 - Penalty cannot be levied in case of contrary decision in another case as facts already in the knowledge of Department.
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REMEDY TO A PERSON AGGRIEVED BY ANY DECISION OR ORDER

- **Any Order passed by the PO under Section 60 to 64 shall be an Order passed by the Adjudicating Authority and shall be Appealable before the Appellate Authority.**
- **Sec. 107 - Appeals to Appellate Authority.** — (1) Any person **aggrieved by any decision or order** passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act **by an adjudicating authority** may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.
- **Sec. 2(4) “adjudicating authority”** means any authority, appointed or authorised to pass **any order or decision** under this Act, but does not include the CBIC, the Revisional Authority, the AAR, the AAAR, the National Appellate Authority for Advance Ruling, the Appellate Authority, the Appellate Tribunal and the Authority referred to in sub-section (2) of `section 171;

SECTION 160 - ASSESSMENT PROCEEDINGS, ETC., NOT TO BE INVALID ON CERTAIN GROUNDS

○ Protection from Technical Errors

- *160. (1) No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of this Act **shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein**, if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings are **in substance and effect** in conformity with or according to the intents, purposes and requirements of this Act or any existing law.*
- *(2) The service of any notice, order or communication **shall not be called in question**, if the notice, order or communication, as the case may be, **has already been acted upon** by the person to whom it is issued or where such service has not been called in question at or in the earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication.*



IMPACT OF NON-MONETARY TRANSACTIONS



SECTION 9(1) OF CGST ACT

- *Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, **on the value determined under section 15** and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.*



SECTION 15 – VALUE OF TAXABLE SUPPLY

*(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related **and the price is the sole consideration for the supply.***

*(4) Where the value of the supply of goods or services or both **cannot be determined under sub-section (1)**, the same shall be determined in such manner as may be prescribed. – **Rules 27 to 35***



RULE 27 – WHERE THE CONSIDERATION IS NOT WHOLLY IN MONEY

Where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall,-


- a) be the **open market value (OMV)** of such supply;
- b) if OMV is not available, be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;
- c) if not determinable under (a) or (b), be the value of supply of goods or services or both of like kind and quality;
- d) if the value is not determinable under (a) or (b) or (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of rule 30 or rule 31 in that order.

EXPLANATION - OPEN MARKET VALUE

Explanation.- For the purposes of the provisions of this Chapter, the expressions-

(a) **“open market value”** of a supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made;

(b) **“supply of goods or services or both of like kind and quality”** means any other supply of goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and the reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both.



RULE 30 & 31

30. Value of supply of goods or services or both based on cost

Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the value shall be **one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.**

31. Residual method for determination of value of supply of goods or services or both.-

Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using **reasonable means consistent with the principles and the general provisions of section 15** and the provisions of this Chapter:

Provided that in the case of supply of services, the supplier may opt for this rule, ignoring rule 30.



CONSIDERATION – CLAUSE 2(31)

2(31) of CGST Act 2017 - “**consideration**” in relation to the supply of goods or services or both includes—

- (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;
- (b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply.



GST E-FLYER RELEASED BY CBIC

CH. 29, (01.01.2018)

Taxable value when consideration is not solely in money

In some cases, where consideration for a supply is not solely in money, taxable value has to be determined as – prescribed in the rules. In such cases following values have to be taken sequentially to determine the taxable value: -

- I. Open Market Value of such supply.*
- II. Total money value of the supply i.e. monetary consideration plus money value of the non-monetary consideration.*
- III. Value of supply of like kind and quality.*
- IV. Value of supply based on cost i.e. cost of supply plus 10% mark-up.*
- V. Value of supply determined by using reasonable means consistent with principles & general provisions of GST law.
(Best Judgement method)*



THANKS

